

## REMARKS

This amendment is responsive to the non-final Office Action, dated June 02, 2006, on the merits in the above captioned application. Claims 1, 9, 23, 25 and 34 are amended. Claims 1-2 and 4-36 are currently pending in the application. Claims 12-13, 16-17, 19-20, 22 and 32-33 are indicated as allowable if re-written in independent form, and 35 is allowed. Claims 1, 23, 25, and 34-36 are independent claims.

Applicants' again note that U.S. Patent 6,233,763 to Spann has not been made of record on an Examiner's PTOL 892. The Examiner applied this reference in the non-final Office Action dated December 9, 2005, see page 8, line 3. The Examiner must cite this reference on a PTOL 892 for printing on the face of the patent at issuance.

Now turning to the Examiner's specific rejections:

A. Claims 1, 5-11, 14-15, 18, 23-25, 28-31, 34 and 36 were rejected under 35 U.S.C. § 103 as being unpatentable over Herdal in view of Redman.

Herdal does not teach a "cavity sidewall perimeter surface" that billows inward toward said first cavity to snuggly hold said at least one item". Claim 1, lines 18-19. Herdal teaches a bolster with "a stiff or relatively firm framework surrounding the cavity so that night wear contained therein cavity will not become mussed or crumpled when retrieved." See Herdal, col. 1 lines 18-22. Herdal *teaches away* from Applicants' invention in that Applicants' desire that items placed in the cavity are snuggly held by the cavity's billowing sidewalls. Snuggly holding night wear with billowing cavity sidewalls would muss or crumple the night wear which goes against Herdal's teachings.

Again, the billowing cavity sidewall is an important feature of the invention. The billowing cavity sidewall makes for a snug fit for an article placed in the cavity. The billowing cavity

sidewall allows articles to be removeably yet securely situated in the cavity. The billowing sidewall is also important because the billow makes for a hidden area under the billow yet above the cavity floor surface. This area is a space hidden from view and can be used for tucking the arms or legs of a stuffed animal under the billow to help hold an item in the cavity. Herdal simple does not teach billowing and billowing to snuggly hold an item.

Herdal does not teach indicia on a pillow which together with an item placed in the pillow visually illustrates a select theme. Herdal merely mentions that the bolster may have an ornamental cover but says nothing about linking the ornamental cover to the night wear stored in the bolster. Redman shows a tooth shaped pillow having dollar sign indicia on a pocket located on a pillow. The pillow of Redman is not analogous to the bolster of Herdal and thus can not be combined. The bolster of Herdal has a cavity for storing night wear. The pillow of Redman has no cavity in the pillow itself. A pocket located on the exterior of a pillow is not analogous to a pillow having a cavity in the pillow itself. Applicants' have carefully claimed a visually illustrated theme relationship, submitted that this relationship is not taught or suggested.

Moreover, the tooth shape and dollar signs on a pocket of Redman's pillow cannot be combined with Herdal without further exacerbating the deficiencies of Herdal. Assuming that the tooth shape and dollar signs on a pocket were applied to Herdal, the item stored would then be a tooth or a coin as consistent with Redman's teachings. It is not clear what happens to Redman's pocket in this modification, it appears that the Examiner just ignores it. So, let us assume the bolster cavity is storing the tooth or coin. The problem lies in that the cavity of Herdal is too big to *snuggly hold* these small items. It does not make sense to shrink the cavity of Herdal's bolster to such a great degree as to snuggly hold a tooth or coin, especially since the cavity opening and cavity floor are of similar dimensions. The cavity of Herdal's bolster is just

not small enough, nor is there billowing to snuggly hold a tooth or a coin. Thus, modifying Herdal with Redman fails to meet presently claimed size relationship where billowing snuggly holds an item place in the cavity.

Still further, independent claims 1 and 25 now set forth the first door specifically opens to *fully* reveal *all* of the first cavity opening, the first cavity opening of similar dimension to the first cavity floor. Herdal shows a cover 26, one half of which opens to reveal a cavity. Only one half of the cavity opening in Herdal is revealed, the rest remains hidden under the other half of cover 26.

Recall that the cavity opening is defined by the cavity sidewalls. Thus, Herdal does not teach or suggest providing a door that opens to *fully* reveal *all* of the first cavity opening. It is noted that this amendment is consistent with two doors covering one cavity (as in claim 11) when the second door is opened prior to the first. This amendment to the claims is provided in the interest of avoiding a patent appeals process and fees associated therewith. Applicants believe this amendment along with the claimed elements addressed above place these claims in condition for allowance.

Independent claims 23 and 34 now set forth a cavity sidewall perimeter surface being longer than a depth of the pillow at an outer perimeter. In order for the cavity sidewall perimeter surface to deliberately billow inward toward the cavity the length of material from the cavity floor to the cavity opening must be longer than the depth of the pillow. See for example, Figure 1G where cavity sidewall layer 144 is longer than the depth of the pillow at the pillows outer perimeter. This is also true of pillows having an outer perimeter layer connecting an outer perimeter of front and back layers of the pillow. See for example Figure 5E where inside cavity 520a the sidewalls can be seen to angle inward and downward thus make the cavity sidewall longer than outline perimeter sidewall 560. See also Figure 6C and 6D where the Noah's Ark

pillow is fatter at door 604 and thus cavity 620a than at outer perimeter sidewall 660. It is believed that this amendment in addition to the claimed elements addressed above place these claims in condition for allowance.

Claim 5 sets forth an opening or cavity having a circumference. It is noted that the term circumference is not limited to round or circular. Circumference merely means the distance around the periphery. Similarly, the term encircles is not limited to round or circular as in claims 16 and 32; see the present specification, page 15, par. 72, line 3.

Claim 7 sets forth a shell of quilted fabric. Quilted fabric is layers of fabric, polyester or cotton batting and backing of cotton or cotton blend fabric quilted together, see the present specification, page 20, par. 081, lines 10-12. More generally, quilted fabric is a batting sandwiched between two layers of fabric that is then quilted, typically with stitches. Herdal does not teach quilted fabric. Herdal shows a cloth or plastic liner (col. 1, lines 55-57) over a rectangular frame 11 made of relatively stiff sponge rubber or the like. Herdal does not teach or suggest quilted fabric. Applicants' use of quilted fabric over a cushioning medium is counter-intuitive since the batting and the cushioning medium doubles the padding. This doubling of padding cost more and is harder to assemble but Applicants' designed the present pillow using double cushioning to achieve more billowing and a more convex shape, as well as, a softer more attractive pillow, thus quilted fabric is not taught by Herdal nor is quilted fabric a design choice

Claim 9 sets forth a front surface that is convexly contoured. Herdal shows a cover 26 overlaying a front surface; the front surface being the top of rectangular frame 11 at liner 14. The liner 14 is shown as flat. Claim 9 requires that the *front surface* be convexly contoured, see for example the present Figure 1G where front surface 102 is convexly contoured. Claim 9 also now sets forth that the securing means and the first door are connected to the front surface.

Herdal shows cover 26 connected to peripheral edges at stitching 40, and shows loops and buttons 35, 36 at an peripheral sidewall 19, see Herdal's Figure 2. Thus Herdal does not show each of the elements of the claim and it is requested that claim 9 be allowed.

Claim 10 sets forth a second door. Herdal does not teach or suggest a second door. Herdal seemingly teaches away from a second door since a person would likely have only one night wear to store. Redman teaches a pocket, not a door. A door opens and closes along a hinge line. A pocket does not have a hinge line; a pocket is fixed on three sides and does not open and close like a door. In addition, Redman only teaches one pocket. Thus, modifying Herdal with Redman does not yield a pillow with two doors.

Claim 11 sets forth the first door and the second door concealing the first cavity in a closed position. The Examiner has not provided a teaching of two doors nor reason to multiple doors absent Applicants' own teachings. Herdal teaches one cover. Redman teaches one pocket. The limitations are not "inherently" met especially absent some convincing reason to multiple doors.

Claim 14 sets forth an outer perimeter of the cushioning member having an outline further visually indicating the illustrated theme. Herdal teaches a bolster for storing night wear. Redman teaches a tooth shaped pillow having a pocket for storing a tooth or coin. As addressed hereabove in section A, par. 3-4, there is simply no reason to apply the tooth shape of Redman's pillow with pocket to Herdal bolster absent Applicants' own teachings. The use of hindsight reconstruction using Applicants' own teachings is not permissible.

Claim 18 is rejected, however claim 18 depends from claim 16 which was objected to as being allowable if combined with intervening claims.

Claim 23 and 25 are allowable for same reasons as claim 1, and in addition, claim 23 and 25 like claim 9 specifically set forth the first door being connected to the front surface *in between*

the outer perimeter of the cushioning member and the first cavity opening. See for example Fig. 1C where door 104 is connected to front surface 102 at hinge 106 in between outline perimeter 110 and cavity opening 126. Herdal shows one-half of a cover serving as a door to a cavity. The half of the cover serving as a door is connect to the fixed half the cover at a foldline. Herdal does not teach or fairly suggest connecting the door half of cover 26 to a front surface, and more specifically, connecting the door half of the cover to a front surface *in between* the outer perimeter and the cavity opening. Applicants' discovered that by locating the door within the pillow's perimeter, the pillow intrigues people to pick up the pillow and look behind the door, thereby discovering the cleverly hidden item inside. This additional door connection feature is also important because in this location the door can be easily recognized as a door and thereby effective at enticing one's curiosity to look behind the door. Applicants' perform an extra manufacturing step to position the door in this location. Positioning the door at this *in between* location is not taught or suggested by the prior art, nor is it an obvious design choice.

Claim 28 sets forth the third layer door having a larger circumference than the cavity opening. As noted above, the cavity opening and the cavity floor are similarly sized and shaped. See for example Fig. 1C and 1D where cavity opening 126 is similarly sized and shaped to cavity floor 124, see the hidden dashed line 150. Herdal's door portion of the cover has a circumference of one-half of the cover which is less than the cavity opening defined by Herdal's cavity sidewall liner 13.

Claim 30 sets forth an outer perimeter shaped to indicate a theme. Herdal teaches a bolster for storing night wear. Redman teach a tooth shaped pillow with a pocket. Absent Applicants' own teachings if would not have been obvious to apply the tooth shape of Redman to Herdal especially since the tooth or coin of Redman is stored in exterior pocket not a pillow cavity. It is

noted that the Examiner says that it is well known to "...employ indicia on a surface, such as a team logo or alter the shape..." (page 3, lines 13-15). Merely putting on indicia or altering the shape of the bolster does not fulfill the present claim limitations. The present claims require that indicia and shape **together** with the stored item visually illustrate a select theme. See for example the barn shape, barn indicia, and barn animals in Fig. 5A. Applying Redman's pillow having a dollar sign indicia on a small pocket and a shape like a tooth to Herdal's night wear storing bolster "in order to personalize and provide a novelty pillow" (Office Action, pg. 3, line 19) is not understood. This appears to be an attempt at hindsight reconstruction and without clear rational for one of ordinary skill in the art to make this combination.

The rejection of claim 36 is not understood. Claim 36 is a combination of original claim 1 and claim 20. Claim 20 is presently indicated as allowable with intervening claims. Claim 20 is drawn to a cover door that covers an opening in a first door. See for example Figure 4C, where door 404 has an opening 456 that is covered by a cover door 454. The cover door feature is not taught or suggested by the prior art. It is respectfully requested that claim 36 be allowed.

**B. Claims 2 and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Herdal in view of Redman and further in view of Saarela et al.**

Claim 2 sets forth a pillow having a cavity, said cavity snuggly holding at least one stuffed animal. Saarela et al. shows a pocket stitched to tote and an angel in the pocket. A pocket on a tote is not analogous to a cavity *in* a pillow. Redman shows a pocket on and exterior of a pillow. A pocket on a pillow is not analogous to a cavity *in* a pillow because there is no cavity in the pillow itself. Thus applying the angel in tote pocket to Herdal is not an obvious modification absent hindsight to Applicants' own invention. Still further, an angel is a fictional fantasy

character not an animal. Saarela et al. thus does not cure the deficiencies of Herdal. Moreover, it appears that Saarela et al. is being used to modify Redman, then those modifications are being used to modify Herdal. The secondary references may only be used to modify the primary reference; it is not permissible to use a third reference to modify a secondary reference.

Claim 26 sets forth a stuffed toy in the present pillows cavity. Herdal teaches night wear in the cavity. Redman teaches a tooth or coin in a pocket. Saarela et al. teaches an angel visibly protruding from a pocket on a tote. It is not an obvious modification to take an angel *visibly* protruding from a tote pocket (Saarela et al.) and place it inside Herdal's bolster *hidden* from view, absent Applicants' own teachings. This is impermissible hindsight.

C. Claims 4 and 27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Herdal in view of Redman and further in view of Gervaise.

Claims 4 and 27 set forth providing sound device that further illustrates the theme of the pillow. Claims 4 and 27 depend from claim 1 and claim 25, respectively. Claims 1 and 25 are sought to be allowed based on the rational set forth above.

D. Claim 21 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Herdal in view of Redman and further in view of Perez-Mesa et al.

Claim 21 sets forth a blanket and container, at least one of which has indicia to visually indicate an illustrated theme in combination with the pillow of claim 1. Herdal does not teach or suggest providing a theme. Redman teaches a tooth shaped pillow, money indicia and storing a tooth or coin in an exterior pocket. Perez-Mesa et al. does not teach or suggest providing a theme, moreover, the pillow 40 of Perez-Mesa et al. appears to be hidden from view inside a

pocket formed by two sections 14, 20 (Perez-Mesa et al., Fig. 4). The pillow of Perez-Mesa et al. is apparently hidden from view so there is no reason to apply a theme to the pillow. Thus, claim 21 is requested as allowable.

For all of the above reasons and others, none of these references individually or in combination teach or fairly suggest the claimed invention. Applicants do not acquiesce to the Examiner's rejections but in the interest of avoiding further appeal fees and time associated therewith certain amendments have been made.

Again, it is noted that the public and distributors are very responsive to Applicants' pillows. They like the pillows because they are creative and unique from anything else presently in the marketplace. Applicants look forward to licensing opportunities when this application is in condition for allowance. It is therefore requested in earnest that the Examiner contact Applicants to avoid any further delays.

Applicants respectfully submit that pending claims 1-2 and 4-36 patentably distinguish over the prior art, and that this application as a whole is in condition for allowance. Early and favorable notice to that effect is therefore respectfully requested. If any issues remain unresolved in the present application, the Examiner is asked in earnest to contact the undersigned Applicants at the telephone number below with any helpful suggestions.

Respectfully submitted,

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Signature:



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Signature: *Nellie Jane Faircloth*  
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